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**BEFORE THE  
PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. ID 2005 64172

JAMES LEROY BLACK  
213 California Court  
Mission Viejo, California 92692

**A C C U S A T I O N**

Physical Therapist License No. AT 3319

Respondent.

Complainant alleges:

PARTIES

1. Steven K. Hartzell ("Complainant") brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about January 12, 1994, the Physical Therapy Board of California issued Physical Therapist Assistant License Number AT 3319 to James Leroy Black ("Respondent"). This license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2006, unless renewed.

JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California ("Board"), under the authority of the following laws and regulations.

1                   4.       Business and Professions Code section 2609 states:

2                   The board shall issue, suspend, and revoke licenses and approvals to practice  
3 physical therapy as provided in this chapter [chapter 5.7, commencing with section 2600].

4                   5.       Business and Professions Code section 2660 states, in pertinent part:

5                   The board may, after the conduct of appropriate proceedings under the  
6 Administrative Procedure Act, suspend for not more than twelve months, or revoke, or impose  
7 probationary conditions upon, or issue subject to terms and conditions any license, certificate, or  
8 approval issued under this chapter for any of the following causes:

9                   . . . .

10                  (d) Conviction of a crime which substantially relates to the qualifications,  
11 functions, or duties of a physical therapist or physical therapy assistant. The  
12 record of conviction or a certified copy thereof shall be conclusive of that  
13 conviction...”

14                  6.       Business and Professions Code section 2661 states:

15                  “A plea or verdict of guilty or a conviction following a plea of nolo contendere  
16 made to a charge of a felony or of any offense which substantially relates to the qualifications,  
17 functions, or duties of a physical therapist is deemed to be a conviction within the meaning of  
18 this article. The board may order the license suspended or revoked, or may decline to issue a  
19 license, when the time for appeal has lapsed, or the judgement of conviction has been affirmed  
20 on appeal or when an order granting probation is made suspending the imposition of sentence,  
21 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing that person  
22 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict  
23 of guilty, or dismissing the accusation, information or indictment.”

24                  7.       California Code of Regulations, Title 16, section 1399.20, states:

25                  “For the purposes of denial, suspension or revocation of a license, pursuant to  
26 Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be  
27 substantially related to the qualifications, functions or duties of a person holding a license under  
28 the Physical Therapy Practice Act if to a substantial degree it evidences present or potential

unfitness of a person to perform the functions authorized by the license or approval in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following:

“(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, conspiring to violate any provision or term of the Physical Therapy Practice Act....”

8. Section 2661.5, subdivision (a) of the Code states:

“In any order issued in resolution of a disciplinary proceeding before the board, the board may request the administrative law judge to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable cost of the investigation and prosecution of the case.”

### CAUSE FOR DISCIPLINE

(Conviction of a Crime)

9. Respondent is subject to disciplinary action under sections 2660, subdivision (d), and 2661 of the Code, and California Code of Regulations, Title 16, section 1399.20, subdivision (a), in that he was convicted of a crime substantially related to the qualifications, functions, or duties of a physical therapist assistant. The circumstances are as follows:

## February 9, 2005, Conviction

A. On February 9, 2005, in a criminal proceeding entitled “People v. James Leroy Black”, in the Superior Court of California, County of Orange, North Justice Center, Case No. 04NM16261, respondent was convicted by a plea of nolo contendere to the crime of driving with .08% or higher blood alcohol level, a violation of Vehicle Code Section 23152, subdivision (b), a misdemeanor.

B. On February 9, 2005, respondent was placed on probation for three years. He was ordered to pay fines of \$390.00, participate in a 3-month alcohol treatment program, attend Mothers Against Drunk Driving Victim panel, and his driving privilege was restricted for ninety days.

1 C. The facts and circumstances surrounding this offense are as  
2 follows: On November 25, 2004, respondent was investigated by a California Highway Patrol  
3 Officer for driving under the influence of alcohol. The officer detected an odor of alcohol on  
4 respondent's breath, and observed that his eyes were red and glossy, his speech was slurred, and  
5 he had difficulty with his balance. Respondent admitted that he had been drinking beer and  
6 vodka. He failed the field sobriety test. The results of his first breath test indicated that his  
7 blood alcohol content was .14% and the results of his subsequent breath test indicated that his  
8 blood alcohol content was .13%.

9 Respondent was arrested and charged with driving under the influence of alcohol  
10 and driving with .08% or higher blood alcohol level, violations of Vehicle Code section 23152,  
11 subdivisions (a) and (b).

#### 12 DISCIPLINE CONSIDERATIONS

13 \_\_\_\_\_ 10. To determine the degree of discipline, if any, to be imposed on  
14 Respondent, Complainant alleges that on or about December 5, 1985, in Walnut Creek-Danville  
15 Municipal Court, respondent was found guilty in violation of Penal Code section 459 (attempted  
16 burglary). He was sentenced to three years misdemeanor probation. On or about November 5,  
17 1991, respondent signed an application for a physical therapist assistant license under penalty of  
18 perjury. Respondent indicated in the application that he had never been convicted of a criminal  
19 offense when in fact he had. On or about February 17, 1993, a Statement of Issues was filed in  
20 Case No. A-613. This case was based on respondent's failure to report a prior conviction on his  
21 application. Effective January 12, 1994, respondent was issued a probationary license which was  
22 placed on probation for three years. Probation was terminated on January 29, 1997. The records  
23 of the criminal proceedings and prior administrative proceedings are incorporated herein as if  
24 fully set forth.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

1. Publicly Reproving Physical Therapist Assistant License Number 3319 issued to JAMES LEROY BLACK;
2. Ordering James Leroy Black to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.5;
3. Taking such other and further action as deemed necessary and proper.

DATED: June 29, 2005

Original Signed By:  
STEVEN K. HARTZELL  
Executive Officer  
Physical Therapy Board of California  
State of California

Complainant

Black Accusation #2.wpd